

# Tennessee Accessibility Act Frequently Asked Questions

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This page is intended to answer common questions that are routinely asked by design professionals practicing in Tennessee and to promote a better understanding of the Tennessee Accessibility Act and its interaction with the ADA. It is not intended to be construed as legal opinion nor legal advice and is not binding on the State Fire Marshal's Office. Contact the USDoJ or look at <http://www.ada.gov> for much more on accessibility required by the federal government. If you are registrant of the Tennessee Board of Architectural and Engineering Examiners you always have the option of contacting Christy Allen who is currently your board's attorney through 615-741-3072 for clarifications on any questions regarding the Tennessee Accessibility Act and A&E related legal questions.

Q What version of the law is in effect today for ADA requirements?

A First it is important to understand that the Americans with Disabilities Act is actually several civil rights laws rolled into an act. The Act is divided into different parts or sections of applicability. Generally speaking, if you are reading this on the State Fire Marshal's Office's web site Title-II or Title-III of the ADA is most likely what you are inquiring about. 28 CFR Part 35 (available at <http://www.ada.gov/reg2.html>) is Title-II and 28 CFR Part 36 (available at <http://www.ada.gov/reg3a.html>) is Title-III. You should always call the USDoJ to verify what is in effect at the time you ask your question.

Q What does ADA Title-II apply to?

A 28 CFR Part 35 is Nondiscrimination on the Basis of Disability in State and Local Government Services (government owned buildings).

Q What does ADA Title-III apply to?

A 28 CFR Part 36 is Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (non-government buildings).

Q Are there any times when both Title II and III apply?

A Sure, many times depending on the relationship of those involved. It is sufficiently complicated that we suggest you visit the ADA and obtain a copy of the Title II Technical Assistance Manual and look for section "II-1.3000 Relationship to title III" as it has several examples which are quite useful. A copy of the Title II Technical Assistance Manual can be found at <http://www.ada.gov/taman2.html> or through the ADA's main web site at <http://www.ada.gov>.

Sometimes spaces are required to be strictly Title-II and Title-III independently. Sometimes the relationship between the parties involved can result in some dual application of Title-II and III such as when a Title-III entity is acting as an agent for the Title-III entity. The only advice the SFMO can offer in that area is to keep in mind the ADA is all about access to services. Just like architectural elements must be arranged to facilitate access required under the ADA, the relationship between cannot itself be permitted to create a situation where the access is diminished below what the ADA intends under Title-II and III.

- Q What is the difference between the Americans with Disabilities Act (ADA) and the Tennessee Accessibilities Act (TAA) and how do they apply?
- A This question has no simple answer but the most fundamental answer is the ADA is federal civil rights legislation that applies nationwide. Tennessee Accessibilities Act (TAA) is legislation at the state level and cannot be applied to Mississippi, Alabama, Kentucky etc. The TAA is a companion to the federal legislation in a sense that it addresses various things required specifically for Tennessee. While they are companions, they both apply and if you are a designer working on a Title-III building, you are responsible for compliance to both.
- Q If I have an accessibility component that is not required by the Tennessee Accessibilities Act (TAA) but the Americans with Disabilities Act (ADA) requires it can I just omit that accessibility component?
- A No, not without violating federal law. A state law cannot override a federal law. Federal law can override state law.
- Q I obtained a copy of Title-III's regulations from the USDoJ and ADA. After reading it I still am confused on just what I have to provide. Where should I go for help?
- A There are a number of great sources perhaps none better than the USDoJ/ADA directly. You can go to <http://www.ada.gov> and find a link to their enforcement hotline. The USDoJ will provide general answers to many common questions. Always remember that the State Fire Marshal's Office and ADA hotline personnel can offer unofficial opinions but are not dispensing legal advice. In addition, the ADA has technical assistance manuals available for downloading.
- Q When I read "exempt jurisdiction" does it mean I am exempt from ADA requirements?
- A No, the phrase "exempt jurisdiction" means a jurisdiction has set up their own codes department and followed a process which allowed the State Fire Marshal's Office (SFMO) to turn over the majority of occupancies that it (SFMO) would have normally reviewed. Keep in mind even in "exempt jurisdictions" and non-exempt jurisdictions alike the SFMO is still required to review certain types of building plans and that no state has the authority to authorize noncompliance to any federal law such as the Americans with Disabilities Act.
- Q If I have to adhere to whatever ADA requirements the USDoJ enforces and meet Tennessee's too, how does the revision to the Tennessee Accessibility Act help me?
- A Starting midnight 07-01-06 when the revision goes into effect, designers throughout Tennessee can use the applicable federal guideline that applies to their project or they can choose Volume 1-C of the 2002 North Carolina State Building Code with 2004 revisions which is also known as the North Carolina Accessibility Code. The exemption/non-exemption status of the jurisdiction doesn't matter.

- Q How does the 2002 North Carolina Accessibility Code with 2004 revisions help me with ADA Title-III issues?
- A North Carolina Department of Insurance Office of State Fire Marshal have expended great efforts to work with the United States Department of Justice to have their state code (NCAC) certified as meeting or exceeding the requirements of Title-III of the ADA. A paraphrase of 36.602 of Title-III states that if you design to a state certified code and there is a Title-III lawsuit filed then you will have already established that you complied with the ADA. The law uses the term “rebuttable evidence”. It doesn’t mean you cannot loose in court, but it definitely sets the burden of proof very high in any court case heard. You can’t just say you designed to the certified code, you actually have to have done it. The NCAC is highly prescriptive. It leaves a lot less to the imagination or interpretation and provides an illustrated guide on how to address many of those issues you may find yourself wrestling with.
- Q If North Carolina has successfully gotten their accessibility code certified in accordance with 28 CFR Part 36 602, will “rebuttable evidence” automatically apply to me here in Tennessee?
- A Certainly if you are working across the state line in North Carolina. 28 CFR Part 36 602 is a little vague if one state adopts another state’s certified code whether or not “rebuttable evidence” automatically applies. The law simply doesn’t say yes or no. It is reasonable to believe a designer is better equipped to defend a design based on a code certified by the USDoJ as meeting or exceeding the requirements of ADA Title-III than a standard such as the ICC/ANSI A117.1 1998 or 2003 edition.
- Q A co-worker of mine tells me that the IBC is getting their code certified by the USDoJ; is he correct?
- A No. We suggest you don’t take anyone’s word for this and call the USDoJ’s ADA enforcement accessibility specialists.
- Q How is it that North Carolina can go through the process and receive USDoJ certification, but the International Code Council cannot?
- A Title III (28 CFR Part 36 602) has provisions for state or local governments to certify their codes. The International Code Council’s International Building Code is a **model code** and as such is ineligible for certification. 36.602 specifically states “On the application of a State or local government, the [USDoJ] Attorney General may certify that a code meets or exceeds the minimum requirements ...”.
- Q I understand the ICC can’t certify their code under Title-III but I’m guessing they have some avenue available to them; can you explain how a State or local government can acquire certification and what the USDoJ provides for model codes?
- A Title III (28 CFR Part 36 602) provides only for State and local governments to apply for certification while Part 36 608 permits private parties such as the ICC to ask the USDoJ to evaluate their model code and in the end, essentially tell them what the ICC needs to fill in, delete, modify, whatever in order to be compliant to Title-III. We recommend you start looking at <http://www.ada.gov/certcode.htm> which can help explain 602 and 608 of Title-III.

- Q If model codes cannot be certified under Title III (28 CFR Part 36 602) what good does Part 36 608 do them?
- A When the USDoJ completes the process of evaluating a model code the end result is combination of what they have and what they need to do in order for a State or local government to do to make application to the USDoJ under 28 CFR Part 36 602. Part 36 608 allows model codes to jump-start in the process; much more work will need to be done by the applying State or local government for them to receive their certification.
- Q What are the current accessibility codes?
- A Until 07-01-06 the only accessibility codes available are determined by a Tennessee Department of Finance and Administration (F&A) rule that the office of the state architect has which limits you to **either** the 1991 Volume 1-C of North Carolina State Building Code with the 1996 revisions **or** the 1992 CABO/ANSI A117.1. An important thing to note here is that a designer must pick one or the other.
- Q Where can I find either of the two accessibility codes?
- A As far as we know, they are both out of print which was just one of the motivations for updating the law that controlled accessibility in public buildings.
- Q Since I can't get either code can I just use a newer version of either one?
- A No. There are no provisions for alternates in the current law. That will change after midnight 07-01-06 when the new law takes effect.

- Q I read an article by Betts Barber-Nixon of the Tennessee Building Officials Association in Tennessee Town & City\*, Volume 56, Number 11 dated June 13, 2005 entitled *Construction safety standards to change* where she said “*The state fire marshal will be enforcing the 2002 North Carolina Accessibility Code with 2004 Amendments. All local governments will be required to enforce this code, the ICC/ANSI A117.1 Accessible and Usable Buildings and Facilities American National Standard or one of the federal accessibility codes. This amendment will also take effect on July 1, 2006.*”; is she correct?

\* Tennessee Town & City is a publication of the Tennessee Municipal League

- A No. but she is correct that the revision to the state law does take effect on July 1, 2006.

First it is necessary to understand while the Tennessee Accessibility Act's recent revision applies to Tennessee in the whole, the law treats jurisdictions who have complied with Tennessee Code Annotated 68-120-101 (b) (2) differently. This is the part of the statute that sets the requirements for “exempt jurisdiction” status with the State Fire Marshal's Office (SFMO). Currently only 33 local jurisdictions have been granted exempt jurisdiction status – the entire rest of Tennessee is not exempt.

Secondly, the SFMO will enforce the 2002 North Carolina Accessibility Code (NCAC) w/2004 amendments, currently enforced version of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the currently enforced version of the Uniform Federal Accessibility Standards (UFAS) whichever is applicable and selected by the submitting A&E Registrant. An important point to note is that the only versions designers can use are the ones actively enforced by the United States Department of Justice. UFAS is only enforced on ADA Title-II buildings and structures and therefore cannot be applied to Title-III buildings and structures. In other words, UFAS is not applicable to non-government owned buildings. It should also be noted that UFAS and ADAAG are guidelines and not “codes” and lack a great deal of scoping needed to know what to apply when and where.

Lastly, local jurisdictions (all but the 33 currently exempt jurisdictions) cannot apply any version of any ICC/ANSI A117.1 as their accessibility code either now or after 12:01 July 1, 2006. They can only apply the NCAC 2002 w/2004 revisions or whichever federal guideline the USDoJ enforces for the building or structure at issue.

The 33 exempt jurisdictions can use the three available choices the SFMO enforces or just about whatever they select; the exempt jurisdictions do not have to apply the NCAC, UFAS, ADAAG nor any ANSI A117.1 edition. The exact wording in the revision says “(2) *For public buildings for which a local building inspector is the responsible authority, a local government may select handicapped accessibility specifications from the codes or publications listed in subdivision (a)(1) of this section or from the codes or publications of other nationally recognized agencies or organizations.*” [see Public Chapter 284 on file with at <http://www.legislature.state.tn.us/bills/currentga/Chapter/PC0284.pdf>]

- Q Can I adopt the ICC/ANSI A117.1 1998 as part of the International codes family as my sole accessibility code in my non-exempt jurisdiction?

- A No.

- Q My jurisdiction has received exempt status from the State Fire Marshal's Office, can I adopt the ICC/ANSI A117.1 1998 as part of the International codes family as my sole accessibility code in my exempt jurisdiction?
- A No, not yet. After 12:01am on 07-01-06 you can select what the State Fire Marshal's Office adopts or any other codes or publications of other nationally recognized agencies or organizations but do so cautiously.
- Q I have had ICC/ANSI A117.1 2003 adopted for some time and the 1998 edition adopted before that as my sole accessibility code or standard; have I been violating state law the entire time?
- A Yes. The current law doesn't allow for any version of A117.1 except for the 1992 CABO version.
- Q I have seen references to the 1998 ICC/ANSI A117.1 in the International Building Code and the NFPA 101 Life Safety Code; aren't I immune from ADA Title-III lawsuits?
- A No. No one is immune from litigation. With some exceptions, anyone can file suit on someone else; that isn't the real question. A better question may be if someone files against you, are they likely to prevail? What can be said with certainty is you should look at just what those code reference the 1998 ICC/ANSI A117.1 for. NFPA 101 Life Safety Code and the IBC are generally limited to Accessible Means of Egress (getting folks out).
- Q If I use the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23, 2004, aren't I immune from ADA Title-III lawsuits?
- A No. No one is immune from litigation. With some exceptions, anyone can file suit against someone else; that isn't the real question. A better question if someone files against you, are they likely to prevail? What can be said with certainty is you should follow the minimums enforced by the United States Department of Justice (USDoJ) for Title-III. Currently the ADA-ABAG is not recognized by the USDoJ for enforcement since it isn't codified in 28 CFR Part 36.
- Q Can I use the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23, 2004, as my sole design code or guideline for ADA Title-III?
- A No, not as the law stands statewide.
- Q When can I use the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23, 2004, as my sole design code or guideline for ADA Title-III?
- A After midnight on 07-01-06 **and only if** the United States Department of Justice (USDoJ) modifies 28 CFR Part 36 to allow its use.
- Q When can I use the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23, 2004, as my sole design code or guideline for ADA Title-III in my exempt jurisdiction?
- A After 12:01 a.m. on 07-01-06 but you need to realize **until** the United States Department of Justice (USDoJ) modifies 28 CFR Part 36 to allow its use your exempt jurisdiction is still bound to whatever version of ADAAG is enforced through federal law regardless of what Tennessee's laws require.

- Q As the current law stands, can you give me an example of how the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23 2004, ICC/ANSI A117.1 1998 and 2003 editions don't comply with some element of design?
- A The accessibility guidelines and each of the standards share many commonalities one of which are elevator dimensions. In short, they allow for elevators which are smaller than the law (28 CFR Part 36 as revised July. 1 1994) allows. Any designer knows that adding an elevator and shaft in a building and finding halfway through the project that the elevator he/she selected isn't large enough to comply with Title-III of the ADA can be an unwelcome discovery.
- Q Can you speculate on when you think the USDoJ will allow the smaller elevators permitted by the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23 2004, ICC/ANSI A117.1 1998 and 2003 editions?
- A No but we have been made aware that one potential issue exists with other departments of the federal government paying for/providing/assisting the acquisition of more and more scooters every day and that wheelchairs generally are more maneuverable than are the "scooters". Caution should be exercised when selecting any elevator size not directly supported by the current statute.
- Q I am building a building and just now realized that I am going to have to put an elevator in it but I can't squeeze a full sized 54" deep x 68" wide elevator and shaft in without delaying the project six months, can I use a smaller elevator under Title-III?
- A The answer is always no for new construction. It makes no difference if you have to go to back to a total redesign to make it compliant. Renovations in existing buildings cannot allow any elevator less than 48" by 48" under any conditions and a fully compliant full-sized elevator has to be technically infeasible in the existing building to qualify.
- Q It is going to cost more than we want to spend on this old building to put an elevator in it; doesn't that qualify it as "technically infeasible"?
- A No. Cost is not a factor in classification as "technically infeasible". Part 36, Appendix A, 4.1.6 Accessible Buildings: Alterations, *Technically Infeasible*. states "Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility."

- Q If after 12:01a.m. on 07-01-06 and I am in an exempt jurisdiction, can I put a Limited Use/Limited Application elevator where a full sized 54" deep x 68" wide elevator is required by Title-III?
- A The answer is "yes" and "no" – and we suggest you hire an experienced attorney in such a situation for advice. As an SFMO exempt jurisdiction you can select any other codes or publications of other nationally recognized agencies or organizations and not violate the revised Tennessee Accessibility Act (TAA); however, you still will have to comply with the currently enforced ADA Title-III (28 CFR Part 36). Technically speaking, if you were to select the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) published July 23 2004 it would have to permit the use of whatever configuration you selected. If you deviated from ADA-ABAG, then you would be in violation of the TAA.